

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BRIAN D. BRADLEY,

Plaintiff,

v.

CHRISTIAN A. PRESTEEN, et al.,

Defendant.

CASE NO. 2:20-cv-00767-RSM-BAT

**PROTECTIVE ORDER AND  
ORDER CONCERNING  
PRODUCTION OF DOCUMENTS  
AND MATERIALS**

Having considered the parties' Stipulated Motion for Protective Order for Production and Limited Use and Disclosure for Documents (Dkt. 14), and finding that the requested relief is appropriate, the Court **ORDERS** that documents relating to Christian Presteen, which may contain confidential information, are relevant to this action and subject to discovery and must be produced. However, because special protections are warranted, the documents are subject to the following protections and restrictions:

1. PURPOSES AND LIMITATIONS

The State of Washington ("State") has been served with discovery requests in this action which, while reasonably calculated to lead to the discovery of admissible evidence, involve production of documents and materials for which special protections may be warranted.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include, but shall not limited to, the following documents and requested by plaintiff which may implicate privileged, confidential or sensitive matters as described below:

- a) Physical and/or Mental Health Treatment information of Christian Presteen dating back to 1998 or before, a post-incident video of Mr. Presteen, or other documents claimed to be protected as confidential by RCW 70.02.230, RCW 10.77.210 and/or by 42 U.S.C. § 1320d-6 and 45 CFR Part 160 and Subparts A and E of Part 164 (“HIPAA”);
- b) Other personal health information of Christian Presteen or other documents claimed to be protected by RCW 70.02.020, RCW 70.02.060(2), RCW 70.96A.150 and/or by 42 U.S.C. § 290dd-2, 42 U.S.C. § 1320d-6 and 45 CFR Part 160 and Subparts A and E of Part 164 (“HIPAA”);
- c) Criminal non-conviction information regarding Christian Presteen, including without limitation, Mr. Presteen’s DOC central file, disciplinary hearing, OMNI chronos, and other DOC records, dating back to 1998 or before, or other documents claimed to be protected as confidential by RCW 10.97.050, 28 U.S.C. § 534 and C.F.R. § 20.33;
- e) Any other documents or materials claimed to be sensitive, personal or private, and which may implicate any laws concerning their disclosure or dissemination.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

1 However, the protections conferred by this agreement do not cover information that is in the public  
2 domain or becomes part of the public domain through trial or otherwise.

3 The parties do not intend for the listing of confidential material above to be an exclusive  
4 listing. A responding party may believe that other information and materials that are requested in  
5 discovery should be treated as confidential and shall designate it for protection subject to the  
6 provisions of this order.

7 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

8 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
9 or produced by another party or by a non-party in connection with this case only for prosecuting,  
10 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the  
11 categories of persons and under the conditions described in this agreement. Confidential material  
12 must be stored and maintained by a receiving party at a location and in a secure manner that ensures  
13 that access is limited to the persons authorized under this agreement.

14 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
15 by the court or permitted in writing by the designating party, a receiving party may disclose any  
16 confidential material only to:

- 17 (a) the receiving party’s counsel of record in this action, as well as employees of counsel  
18 to whom it is reasonably necessary to disclose the information for this litigation;  
19 (b) the officers, directors, and employees (including in house counsel) of the receiving  
20 party to whom disclosure is reasonably necessary for this litigation, unless the parties  
21 agree that a particular document or material produced is for Attorney’s Eyes Only and  
22 is so designated;  
23

- 1 (c) experts and consultants to whom disclosure is reasonably necessary for this litigation  
2 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);  
3 (d) the court, court personnel, and court reporters and their staff;  
4 (e) copy or imaging services retained by counsel to assist in the duplication of confidential  
5 material, provided that counsel for the party retaining the copy or imaging service  
6 instructs the service not to disclose any confidential material to third parties and to  
7 immediately return all originals and copies of any confidential material;  
8 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
9 necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
10 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.  
11 Pages of transcribed deposition testimony or exhibits to depositions that reveal  
12 confidential material must be separately bound by the court reporter and may not be  
13 disclosed to anyone except as permitted under this agreement;  
14 (g) the author or recipient of a document containing the information or a custodian or other  
15 person who otherwise possessed or knew the information.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
18 that designates information or items for protection under this agreement must take care to limit  
19 any such designation to specific material that qualifies under the appropriate standards. The  
20 designating party must designate for protection only those parts of material, documents, items, or  
21 oral or written communications that qualify, so that other portions of the material, documents,  
22 items, or communications for which protection is not warranted are not swept unjustifiably within  
23 the ambit of this agreement.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
2 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
3 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
4 and burdens on other parties) expose the designating parties to sanctions.

5 If it comes to a designating party's attention that information or items that it designated for  
6 protection do not qualify for protection, the designating party must promptly notify all other parties  
7 that it is withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
9 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
10 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
11 be clearly so designated before or when the material is disclosed or produced.

12 (a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition  
13 exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
14 the designating party must affix the word "CONFIDENTIAL" to each page that  
15 contains confidential material. If only a portion or portions of the material on a page  
16 qualifies for protection, the producing party also must clearly identify the protected  
17 portion(s) (*e.g.*, by making appropriate markings in the margins).

18 (b) Testimony given in deposition or in other pretrial or trial proceedings: the parties must  
19 identify on the record, during the deposition, hearing, or other proceeding, all protected  
20 testimony, without prejudice to their right to so designate other testimony after  
21 reviewing the transcript Any party may, within fifteen days after receiving a deposition  
22 transcript, designate portions of the transcript, or exhibits thereto, as confidential.  
23

1 (c) Other tangible items: the producing party must affix in a prominent place on the  
2 exterior of the container or containers in which the information or item is stored the  
3 word "CONFIDENTIAL." If only a portion or portions of the information or item  
4 warrant protections, the producing party, to the extent practicable, shall identify the  
5 protected portion(s).

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
7 designate qualified information or items does not, standing alone, waive the designating party's  
8 right to secure protection under this agreement for such material. Upon timely correction of a  
9 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
10 in accordance with the provisions of this agreement.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
13 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
14 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
15 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
16 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
17 original designation is disclosed.

18 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
19 regarding confidential designations without court involvement. Any motion regarding confidential  
20 designations or for a protective order must include a certification, in the motion or in a declaration  
21 or affidavit, that the movant has engaged in a good faith meet and confer conference with other  
22 affected parties in an effort to resolve the dispute without court action. The certification must list  
23

the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality. The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

#### 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

- (a) promptly notify the designating party in writing and include a copy of the subpoena or court order;
- (b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and
- (c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

#### 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement,

and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

DATED this 12th day of March, 2021.



BRIAN A. TSUCHIDA  
Chief United States Magistrate Judge



**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court for the Western District of Washington on  
[date: \_\_\_\_\_] in the case of *Brian Bradley v. Christian Presteen, et al.*, Case No. 2:20-  
CV-00767-RSM-BAT. I agree to comply with and to be bound by all the terms of this Stipulated  
Protective Order and I understand and acknowledge that failure to so comply could expose me to  
sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in  
any manner any information or item that is subject to this Stipulated Protective Order to any person  
or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_